IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20498 of 2001

Between:

S.Trimurthulu S/o. Narasimha Murthy and 2 others

..... PETITIONERS

AND

1. The Andhra Pradesh State Co-operative Bank Limited,

represented by its Managing Director
Troop Bazar, Hyderabad.
2. The Commissioner and Registrar of Co-operative Societies

Government of Andhra Pradesh, Hyderabad.
3. The Government of Andhra Pradesh Rep by its Principal

Secretary Co-operation, Secretariat Buildings, Hyderabad.
4. The Andhra Pradesh State Co-op Bank Staff Training

Institute represented by its Director(Training)
ICT Complex, Rajendrabnagar,
Hyderabad.

.....RESPONDENTS

The Court made the following:

ORDER:

Challenging the action of the respondents in not regularizing the services of the petitioners in the existing vacancies in clerical cadre in the fourth respondent institute, the present writ petition has been filed.

The case of the petitioners, in brief, is that they were appointed as Office Assistants on 02.08.1991, 04.08.1991 and 24.03.1992 respectively and they have been working as such without any blemish. Despite considering the representations of the petitioners for regularizing their services, consequential steps have not been taken even after lapse of long time from the date of resolution i.e. 05.04.1993. The Commissioner for Co-operation and Registrar of Co-operative Societies, Government of Andhra Pradesh accorded permission to the fourth respondent vide letter Rc.No.77873/86/WBSP, dated 16.12.1995 to regularize the services of the petitioners. Despite that, no consequential steps have been taken to regularize the services of the petitioners. Further, it is the case of the petitioners that in terms of the provisions of Act 2 of 1994 as amended from time to time, a temporary employee is entitled to seek regularization of service, if he completes five years of service as on 18.08.1998, subject to availability of clear vacancies, and that they fulfilled all the conditions stipulated in Act 2 of 1994 as amended from time to time. Therefore, they are entitled for regularization of their services as Office Assistants. They further states that Sri G.S. Satyanarayana and Smt. G. Prema were similarly appointed on contractual terms and their services were regularized as such on 24.09.1997 and some of the employees, who were appointed as daily wage attenders under the same NCDC scheme, filed a writ petition in W.P.No.21468 of 1999 seeking regularization of their services and the same was allowed on 22.01.2001 with a direction to regularize their services w.e.f. 25.11.1993 and in pursuance of the said orders, their services were regularized. Though the petitioners fulfilled all the requirements, their services were not regularized. Therefore, the present writ petition came to be filed.

The first respondent-Cooperative Bank filed its counter affidavit, admitting some of the allegations of the petitioners and stating that Sri G.S. Satyanarayana and Smt. G. Prema, who were working in APCOB – CTI on contract basis, fulfilled the conditions stipulated in G.O. Ms.No.22, dated 22.04.1994 and completed five years of service as on 25.11.1993, therefore their services were regularized. Sri Md. Rawoof, Sri T. Chittibabu, and Sri D. Srinivas, who have been working as daily wage attenders in APCOB- CTI, filed W.P. 21468 of 1999 seeking regularization of the services as they have complied with the conditions stipulated in G.O.Ms.No.212, dated

22.04.1994, and the same was allowed by this Court on 22.01.2001. It is further stated in the counter affidavit that the petitioners have not complied with the conditions stipulated in G.O.Ms.No.212, dated 22.04.1994. The regularization can be done only by the Government under the Scheme framed vide G.O.Ms.No.212 and that the first respondent-bank has no power to regularize the services of any temporary/daily wage employee. It is further stated that Section 3(2) of the Act 2 of 1994 clearly stipulates that no temporary appointment shall be made in any public service to any post etc., without prior permission of the competent authority etc. It is further stated that G.O.Ms.No.212, dated 22.04.1994 stipulated that such of those persons who have completed five years of service as on 25.11.1993 are alone entitled to be considered for regularization subject to fulfillment of other conditions stipulated therein. A proviso is added to Section 7 of the Principal Act by Act 27 of 1998 stating that the services of those persons continuing as on 25.11.1993 having completed a continuous minimum period of five years of service on or before 25.11.1993 are alone eligible to be considered for regularization. The bank, despite recommending for regularization of 36 Attenders by its letter dated 4.1.1999, the second respondent, keeping in view of the provisions of the Acts recommended the cases of only 2 attenders, who fulfilled the requirements stipulated under the scheme to the Government for regularization, and the government vide Memo dated 05.07.2001 passed orders to regularize their services. It is further contended that one of the conditions imposed under the Act 27 of 1998 is that such of those persons who are continuing as on 25.11.1993 having completed a continuous minimum period of five years of service on or before 25.11.1003 are alone entitled to be considered for regularization. But the petitioners have not fulfilled the above conditions, and therefore, their services have not been regularized.

The second respondent filed counter affidavit contending that the Government has issued certain instructions for regularization of services of daily wage employees vide G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, 22.04.1994 and as per the said instructions, the daily wage employees who worked continuously for five years and completed five years of service as on 25.11.1993 are eligible for regularization of services. The rest of the allegations raised in this counter are in similar lines to the counter filed by the first respondent.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent No.1, the learned Government Pleader for Cooperation appearing on behalf of respondent Nos.2 and 3 and the learned counsel for respondent No.4

The learned counsel for the petitioner contended that the services of the petitioners have to be regularized only on the ground that they have completed five years of service as per the G.O.Ms.No.212, dated 22.04.1994 and the Board also passed resolution continuing the services of the petitioners in which they are working on permanent basis, and therefore, he prays to give a direction to the respondents to regularize the services of the petitioners.

On the other hand, the learned standing counsel for the first respondent contended that the petitioners were appointed on contract basis and their period of contract is being extended from time to time and as per the agreement the services of the petitioners cannot be regularized. He further contended that there is excess staff working in the institution and therefore, the services of the petitioners cannot be regularized.

The petitioners were initially appointed as Office Assistants on 02.08.1991, 05.08.1991 and 24.03.1992 respectively. At the time of appointment, they were appointed temporarily as clerks on contract basis up to 30.06.1992. Thereafter, their services had been extended from time to time, and on 04.02.2005 the petitioners and the respondents entered into an agreement. The proceedings of the respondents dated 24.09.1997 would go to show that it is open for the employer to terminate the petitioners without assigning any reasons even before the completion of the period of contract by giving 30 days notice or wages in lieu thereof without assigning any reasons therefor. One of the terms and conditions also made clear that the appointment is temporary and purely on contract basis and he shall not claim any absorption in the vacancies of A.P. State Cooperative Bank. The petitioners themselves entered into the agreement with the respondents, and therefore, the petitioners are bound by the terms of the contract. The learned counsel for the petitioners relied upon a decision reported in **District Collector/Chairman and others v. M.L. Singh and others,** wherein it is held:

We have heard the learned Counsel for the parties. These matters relate to regularization and payment of wages to the respondents who were employed on daily wage basis. By the impugned judgment the Division Bench of the High Court, while affirming with modification the order passed by the learned single Judge has directed that all employees who have completed give years of continuous service should be considered for regularization in accordance with the terms of G.O.Ms.No.212, dated April 22, 1994 and that they should be paid their wages at par with the wages paid to the permanent employees of that category. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularization. In so far as regularization is concerned, we are of the view that the High Court has rightly directed that on the basis of the Notification G.O.Ms.No.212, the respondent employees shall be regularized with effect from the date or dates, they completed five years' continuous service. It is, however, made clear that the other conditions laid down in the said G.O.Ms.No.212, will have to be satisfied for the purpose of regularization. The special leave petitions are disposed of accordingly. No costs."

A perusal of the above decision it is clear that the services of an employee shall be regularized with effect from the date, they completed five years of continuity service. The other conditions in the G.O.Ms.No.212, dated 22.04.1994 have to be applied. The terms and conditions of the G.O.Ms.No.212, dated 22.04.1994 are as follows:

1. *The persons appointed should possess the qualifications prescribed as per rules in forced as on the date from which his/her services have to be regularized.*

2. *They should be within the age limits as on the date of appointment as NMR/Daily wage employees.*

3. *The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.*

4. *Sponsoring of candidates from Employment Exchange is relaxed.*

5. *Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.*

6. *In the case of Work charged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Work-charged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of work-charged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service."*

One of the conditions reads that the absorption shall be against a clear vacancy.

The specific stand taken by the respondents is that there are no vacancies and the excess staff has been deputed to some other banks on deputation. It is also the case of the respondents that there is surplus staff working in the bank, and therefore, the question of regularization does not arise. Since the conditions in G.O.Ms.No.212, have not been satisfied, the question of regularization does not arise. Further more, the petitioners were appointed purely on contract basis and the contract period is being extended from time to time, and therefore, they are bound by the terms and conditions of the agreement. Since the agreement clearly provides that the petitioner cannot have any right for regularization of services, the question of granting such relief does not arise. Therefore the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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(K.C. BHANU, J)

Date: 17.08.2005

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